

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GREGORY A. FRITZ,

Petitioner,

v.

NETHANJAH BREITENBACH, *et al.*,

Respondents.

Case No. 3:23-cv-00241-ART-CLB

ORDER

This habeas corpus action was initiated on June 6, 2023, by Gregory A. Fritz, who is incarcerated at Nevada's Lovelock Correctional Center. The Court received Fritz's *pro se* petition for writ of habeas corpus on July 12, 2023. (ECF No. 6.) On July 21, 2023, the Court granted Fritz's motion for appointment of counsel appointed counsel appeared on Fritz's behalf on August 17, 2023. (ECF Nos. 7, 8, 11.) With counsel, Fritz filed a first amended habeas petition for writ of habeas corpus on May 13, 2024. (ECF No. 19.) Also on May 13, 2024, Fritz filed a motion for leave of court to file a second amended habeas petition. (ECF No. 20.) The respondents filed an opposition to that motion (ECF No. 21), and Fritz filed a reply (ECF No. 25). Fritz attached his proposed second amended petition to his reply. (ECF No. 25-1).

The Court grants leave to amend when justice so requires. *See* Fed. R. Civ. P. 15(a)(2). Rule 15 is applied with "extreme liberality." *See United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). When deciding whether to grant leave to amend, a court may consider such factors as "bad faith, undue delay, prejudice to the opposing party, futility of the amendment, and whether the party has previously amended his pleadings." *In re Morris*, 363 F.3d 891, 894 (9th Cir. 2004). The Court determines that granting Fritz leave to file the second amended petition is in the interests of justice, and there is no indication of bad faith, undue

1 delay, prejudice to Respondents, futility of the amendment, or any other factor
2 weighing against granting Fritz leave. The Court will grant Fritz's motion and
3 order his second amended petition filed, and the Court will set a schedule for
4 Respondents to respond to the second amended petition. In this order, the Court
5 does not make any comment upon, or affect in any manner, the operation of any
6 applicable statute of limitations.

7 When Fritz filed his reply in support of his motion for leave to amend, Fritz
8 filed an exhibit under seal (ECF No. 26), and he attached to the reply a motion
9 for leave to file the exhibit under seal (ECF No. 25-2). While there is a strong
10 presumption in favor of public access to judicial filings and while courts prefer
11 that the public retain access them, *see Nixon v. Warner Communications, Inc.*,
12 435 U.S. 589, 597 (1978), a court may seal its records if a party demonstrates
13 "compelling reasons" to do so. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d
14 1172, 1178–79 (9th Cir. 2006). The exhibit Fritz filed under seal includes an
15 individual's medical records. There is good cause for the exhibit to be filed under
16 seal.

17 It is therefore ordered that Petitioner's Motion for Leave to File Second
18 Amended Petition for Writ of Habeas Corpus (ECF No. 20) is granted.

19 It is further ordered that the Clerk of the Court is directed to separately file
20 Petitioner's Second Amended § 2254 Petition (ECF No. 25-1). The Clerk of the
21 Court is directed to cross out the word "Proposed" in the caption of that document
22 to reflect that it is Petitioner's "Second Amended § 2254 Petition."

23 It is further ordered that the Clerk of the Court is directed to separately file
24 Petitioner's Motion for Leave to File Exhibit Under Seal (ECF No. 25-2).
25 Petitioner's Motion for Leave to File Exhibit Under Seal (ECF No. 25-2) is granted.
26 As the exhibit in question has already been filed under seal (ECF No. 26), the
27 Clerk of the Court need take no further action in this regard.
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1 It is further ordered that Respondents will have 60 days from the date on
2 which this order is entered to file an answer or other response to the second
3 amended habeas petition. In all other respects, the schedule for further
4 proceedings set forth in the order entered August 21, 2023 (ECF No. 12) will
5 remain in effect.

6 Dated this 18th day of June 2024.

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9 ANNE R. TRAUM
10 UNITED STATES DISTRICT JUDGE
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